



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: BCS - 207050

PRELIMINARY RECITALS

Pursuant to a petition filed on December 5, 2022, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on January 4, 2023, by telephone.

The issue for determination is whether petitioner's appeal was filed timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a child who resided with her mother [REDACTED] in Brown County and received BadgerCare Plus (BCP) health care benefits.
2. On May 18, 2020, [REDACTED] contacted the agency by telephone to state that she returned to work on May 5, 2020 and no longer wanted BCP benefits.
3. On May 19, 2020, the agency issued an About Your Benefits notice to [REDACTED], informing her that BCP benefits for herself and petitioner would end on June 1, 2020 because she did not ask for the benefit. The notice informed petitioner that she could appeal the decision and that the deadline to appeal was July 17, 2020.
4. The May 19, 2020 notice was sent to [REDACTED] and was not returned as undelivered.
5. On December 5 2022, [REDACTED] filed an appeal on petitioner's behalf with the Division.

DISCUSSION

[REDACTED] was an ongoing recipient of BCP benefits for herself and her child [REDACTED]. The agency terminated her coverage effective June 1, 2020 based on a request from [REDACTED] on May 18, 2020.

[REDACTED] explained that she did call the agency in May 2020 to discontinue BCP benefits for herself, because she returned to work and had health insurance through her employer. She testified credibly that did not ask to have her daughter [REDACTED]'s BCP discontinued and believed that the daughter continued to be covered by BCP. She said she did not realize until March 20, 2022, that [REDACTED] was not enrolled in BCP.

On May 19, 2020, the agency sent written notice of the action it took pursuant to her May 18, 2020 request. The notice stated that BCP benefits ended for both [REDACTED] effective June 1, 2020. The notice was sent by U.S. Mail to petitioner's correct address and not returned as undelivered. [REDACTED] failed to show or claim that she did not receive the notice. She confirmed that the mailing address was correct and testified that she did not know whether she received the notice. Her testimony did not establish that the agency failed to notify her of its action in terminating [REDACTED] BCP benefits.

[REDACTED] describes a misunderstanding on May 18, 2020, in which she wanted to cancel BCP for herself only, not her daughter, and the agency worker thought she wanted to cancel it for both. This misunderstanding is not relevant. The agency sent written notice clearly describing its action in ending BCP for both [REDACTED] and [REDACTED]. This placed her on notice that the agency believed she requested termination of BCP for [REDACTED] and that it acted accordingly. Petitioner had until July 17, 2020 to appeal the determination to correct the misunderstanding. [REDACTED] did not file her appeal until December 5, 2022, 871 days late.

An appeal contesting a negative action taken against Medical Assistance benefits, and its subsets including BadgerCare benefits, must be filed within 45 days of the effective date of the negative actions. See, Wis. Stat. §49.45(5); see also, Wis. Admin. Code §HA 3.05(3). The negative action was the May 19, 2020 notice. Petitioner did not file her appeal within 45 days. Because the appeal was filed late, I lack jurisdiction to reach the merits of the issue in dispute. The Division's assigned administrative law judges do not possess the powers of a court of equity. Rather, our review is limited to the authority delegated by statute or rule. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). I cannot extend the appeal deadline beyond what is provided by statute.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no authority to consider the petitioner’s appeal because it was filed untimely, as it was not filed with 45 days following negative action by the respondent.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

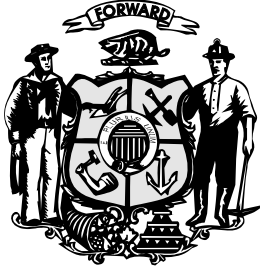
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of February, 2023



\s _____
Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 8, 2023.

Brown County Human Services
Division of Health Care Access and Accountability